IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.2049 OF 2005

Smt.Shamim Zuber Shaikh]
Age 31 years, Residing at]
L Ward, Room No.51, Jijamata]
Nagar, Dr.E.Moses Road, Worli]
Mumbai - 400 018] Petitioner.

versus

1. The State of Maharashtra]
2. Shri A.N.Roy,]
   The Commissioner of Police]
   Brihan Mumbai.]
3. The Superintendent,]
   Nasik Road Central Prison]
   Nasik]
4. The Superintendent]
   Thane Central Prison, Thane] Respondents.

Mrs.A.M.Z.Ansari for the petitioner.
Mrs.A.S.Pai, APP, for the State/Respondents.

CORAM : D.G.DESHPANDE
V.K.TAHILRAMANI JJ.
DATED : MARCH 24, 2006.

JUDGEMENT : [PER D.G.DESHPANDE, J.]

1. Heard learned counsel Mrs.Ansari for the petitioner and learned APP Mrs.Pai for the State.

2. Petitioner is the wife of detenu who is detained under M.P.D.A. Act. The detention order is dated 8th August 2005. It was served upon the detenu on the same day. It is based on one C.R. and two in-camera statements. In the petition, the petitioner has raised number of grounds challenging the detention order. However, the learned counsel appearing for the petitioner made submissions only in respect of Ground Nos. 5(i), (vi) and (Vii).

3. Ground No.5(i) is that there is a delay in issuing the detention order and the delay is of five months. In this regard, the particulars regarding the C.R. and two in-camera statements are required to be seen. As per Annexture "B" to the petition, the C.R. is in respect of an offence allegedly committed by the detenu along with others on 27.02.2005. The incident has occurred on 27.02.2005 with one Smt.Zahanabi

Dawood Ashrafi. She was threatened, slapped and an attempt was made to extort amount from her. She was also threatened not to go to the police. She was frightened. Therefore, her son Afzal Dawood Shaikh lodged a report at Worli Police Station on 27.02.2005. However that was registered as N.C. complaint. Then the said Zahanabi made an application to the Deputy Commissioner of Police on 02.03.2005 and offence came to be registered against the petitioner vide C.R.No. 81/05 on 24.03.2005. The petitioner along with others was arrested on 24.03.2005. He was released on bail in that offence on 01.04.2005. Two in-camera statements were recorded. Witness "A" gave his statement on 11.07.2005 and witness "B" gave his statement on 12.07.2005. The order of detention is dated 08.08.2005. According to the counsel for the petitioner, there is a delay of five months and she has calculated these five months from the date of 1st offence dated 02.03.2005 registered on the complaint of Zahanabi Dawood Ashrafi.

. We do not find that this span can be considered as delay. One solitary incident about which Zahanabi has lodged complaint on 02.03.2005

was rightly not made basis for detention by the detaining authority. They could get that material only after two in-camera statements were recorded from which it was revealed that the petitioner was indulging in similar type of activities under M.P.D.A. Act. The last statement i.e. Statement of Witness "B" is dated 12.07.2005 and the detention order is passed on 08.08.2005. Therefore, there is no delay at all on this count. We do not find any merit in Ground No.5(i).

4. The next Ground No.5(vi) is that one C.R. and two in-camera statements can not bring the detenu under the category of "dangerous person" and, no material was placed before the detaining authority from which it can be said that demand of Rs.1000/- was made by the detenu and his associates except bald statement made by the complainant. Advocate for the petitioner contended that there was no actual payment made to the detenu, even if, the statement of complainant is accepted as it is. This Ground No.5(vi) covers the aspect that the activities of the detenu did not create problem of public order and did not disturb peace and tranquillity or

create a sense of alarm and insecurity in the locality.

5. On the other hand, the learned APP contended that the particulars of the C.R. and two in-camera statements given in the Grounds of detention will show that the detenu was a dangerous person and his activities were affecting public order.

6. So far as C.R. is concerned, it is in respect of offence committed on 27.02.2005 at the night at about 22.00 hours. One Smt.Zahanabi Ashrafi was present in her house. At that time a small boy came to her and informed her that the detenu and his 4-5 other associates were engaged in demolishing her shop. Therefore, Smt.Zahanabi Ashrafi rushed to her shop and found that the detenu and his associates were destroying her Pan Bidi shop. When she questioned, the detenu abused her and threatened her that unless he was paid Hapta of Rs.1000/- per month, he would not permit her shop to be run and he would break her limbs. She was also abused in flimsy language by all of them. Detenu slapped her on her chick.

She shouted for help. But nobody came forward and when the people assembled, the detenu and his associates ran away. One Afzal Dawood Ashrafi the son of the complainant Zahanabi then came there. He questioned the detenu and his associates. There upon the associate by name Mohammad Mehraj Khan of the detenu hold of his collar and gave fist blows on hi stomach and repeated their threats. It is on this basis, C.R.No.81/05 was registered.

7. The incident, reflected in the statement of witness "A", was regarding as to what has happened on 11.07.2005. The person, who is giving his statement, was doing his business of selling fruits in Veer Jijamata Nagar. He was knowing the detenu and his associate. They were giving threats and extorting money from the businessmen, hawkers and shopkeepers. This witness "A" stated that in the first week of February 2005 at about 20.30 the detenu and his associates went to the place of business of this witness. Detenu started eating the fruits and, when he tried to leave the place without paying money for fruits, this witness asked about the bill. The detenu abused and told him that he

would not be permitted to carry his business unless he pays Rs.500/- as hapta. The witness tried to resist and shout for help. The crowd gathered there. But the detenu was alleged to have taken out a chopper and rushed at the people and threatened all of them. Due to fear the witness gave Rs.400/- to the detenu. But while leaving the place, the detenu threatened the witness not to inform the police.

8. We have narrated this incident in short. But it does show that the detenu was a habitual offender and his activities were affecting public order. Therefore, we do not fine any substance in this ground also.

9. Another ground, as stated above, is Ground No.5(vii). It is alleged in this ground that two in-camera statements, recorded on 11.07.2005 and 12.07.2005, were in respect of the offences committed or incidents occurred in first week of February 2005 and second week of March 2005 and, those in-camera statements came to be recorded only to implicate the petitioner in those incidents so as to secure his detention under the M.P.D.A. Act.

. Firstly, according to the petitioner, there is no explanation why the incidents of February 2005 and March 2005 were tried to be covered by recording in-camera statements in July 2005 and, secondly, according to her, these statements were recorded only after the petitioner was released on bail and, it clearly showed that the detaining authority was bent upon detaining the detenu at any rate.

. In this regard a reliance was placed by the learned counsel for the petitioner on un-reported judgment of this Court delivered in **Criminal Writ Petition No.926 dated 13.02.2003 (Salim Annuruddin Shaikh @ Kalya v/z. Mr.M.N.Singh & ors.)**. In that case the detenu got the order of bail on 29.1.2002 as the police could not file charge-sheet within 60 days. However, the detenu could avail of the bail only on 4.3.2002, but two in-camera statements were recorded by the police on the next day on 5.3.2002. In that case the incidents, that were disclosed, were alleged to have taken place in the first week of October 2001 and 3rd week of September 2001. In that judgment, this Court

held, "we are not satisfied with the explanation given by the detaining authority." The Court found that the period of 5 and 6 months was not justified for the witnesses coming forward to give their statements and, the statements were immediately recorded on the next day of the release of detenu on bail.

. The learned counsel appearing for the petitioner tried to contend that this judgment squarely applies to the facts of the present case. We are not agreeable to this proposition. The petitioner was released, as stated above, on bail in April 2005 and the statements came to be recorded in July 2005. No inference can be drawn from this fact that the in-camera statements were recorded only for the purpose of detaining the detenu under M.P.D.A. Act.

10. Since none of the grounds raised helps any water, the petition is liable to dismissed. Hence we pass the following order.

:ORDER:

. Writ Petition is dismissed.

. Rule is discharged.

[D.G.DESHPANDE]

[V.K.TAHILRAMANI]